

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

| | | |
|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| v. |) | Crim. No. 01-101-P-C |
| |) | Civ. No. 03-92-P-C |
| JEFFREY D. STEARNS, |) | |
| |) | |
| Defendant |) | |

RECOMMENDED DECISION

Petitioner Jeffrey D. Stearns has filed a motion pursuant to 28 U.S.C. § 2255 asking the court to vacate the judgment and sentence imposed in this case or, in the alternative, to reinstate his right to pursue a direct appeal because of the ineffective assistance of counsel in perfecting his appeal rights. The Government has answered the petition, indicating “the Government’s investigation of this matter shows that it may not be able to introduce evidence at an evidentiary hearing to overcome [Stearns’s] sworn allegation” that he instructed his counsel to file an appeal following his sentencing and counsel failed to do so. Therefore the Government concedes that Stearns is entitled to relief. See Roe v. Flores-Ortega, 528 U.S. 470, 479 (2000).

Accordingly I recommend that the court **GRANT** Stearns’s motion to the extent that he requests to have his right to file an appeal reinstated and **DISMISS**, without adjudication on the merits, the other grounds raised in the petition. In the event the court accepts this recommendation, it may elect to grant Stearns’s request for appointment of counsel (Docket No. 24) in order to insure that a timely appeal is filed. Therefore, during the next ten (10) days petitioner is **ORDERED** to submit a certified copy of his prisoner

account and an affidavit of indigency. The clerk shall forward the necessary forms to Stearns forthwith.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated July 24, 2003

2255, CLOSED

**U.S. District Court
District of Maine (Portland)
CRIMINAL DOCKET FOR CASE #: 2:01-cr-00101-GC-ALL
Internal Use Only**

Case title: USA v. STEARNS
Other court case number(s): None
Magistrate judge case number(s): None

Date Filed: 11/02/01

Assigned to: JUDGE GENE
CARTER
Referred to:

Defendant(s)

JEFFREY D STEARNS (1)
TERMINATED: 05/01/2002

represented by **JEFFREY D STEARNS**
Reg. No. 04114-036
FCI SCHUYLKILL
P.O. BOX 759
MINERSVILLE, PA 17954-0759
PRO SE

WALTER HANSTEIN, III
JOYCE, DAVID & HANSTEIN,
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(207) 778-2958
TERMINATED: 05/01/2002
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

18:922G.F UNLAWFUL
TRANSPORT OF FIREARMS,
ETC.: Felon in possession of a
firearm, 18 U.S.C. sect. 922 (g)(1)
(1)

Disposition

150 months of imprisonment,
defendant remanded to custody of
US Marshal, 4 years of supervised
release, \$100 special assessment,
\$3,000 fine

Highest Offense Level (Opening)

Felony

Terminated Counts

18:922G.F UNLAWFUL
TRANSPORT OF FIREARMS,
ETC.: Person convicted of a
misdemeanor crime of domestic
violence in possession of a
firearm, 18 U.S.C. section
922(g)(9)
(2)

Disposition

Count 2 dismissed upon oral
motion of the government

**Highest Offense Level
(Terminated)**

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Felony

Complaints

None

Disposition

Plaintiff

USA

represented by **F. MARK TERISON**
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